



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248
Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 070023

Petitioner, Julie Ellen Corman, applied to the Building Commissioner for permission to construct a new sundeck above the existing garage and to construct a new sundeck connecting the garage to her home at 24 Harris Street. The application was denied and an appeal was taken to this Board. The Board met and fixed September 20, 2007 at 7:00 P.M. in the Main Library, Hunneman Hall on the second floor as the time and place of a hearing on the appeal. The Board determined who were the parties affected as they appeared on the most recent local tax list as certified by the Assessors of the Town of Brookline, and notified them, the Planning Board, the Petitioner, and all others required by law by mail. Notice of the hearing was published on August 30, 2007 and September 6, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., c.39, sections 23A and 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

PETITIONER: Julie Ellen CORMAN
LOCATION OF PREMISES: 24 HARRIS ST BRKL
DATE OF HEARING: 09/20/07
TIME OF HEARING: 7:00 P.M.
PLACE OF HEARING: Main Library, Hunneman Hall, 2nd floor

A public hearing will be held for a variance and/or a special permit from:

- 1) 5.43, Exceptions to Yard and Setback Regulations; Special Permit Required.
- 2) 5.60, Side Yard Requirements; Variance Required.
- 3) 5.61, Projections into Side Yards; Variance Required.
- 4) 5.62, Fences and Terraces in Side Yards; Variance Required.
- 5) 5.63, Accessory Buildings or Structures in Side Yards; Variance Required.
- 6) 5.70, Rear Yard Requirements; Variance Required.
- 7) 5.71, Projections into Rear Yards; Variance Required.
- 8) 5.72, Accessory Buildings or Structures in Rear Yards; Variance Required.
- 9) 5.74, Fences and Terraces in Rear Yards; Variance Required
- 10) 8.02.2, Alteration or Extension; Special Permit Required.

Of the Zoning By-Law to construct a new sundeck above the existing garage and to construct a new sundeck connecting the garage and house per plans at **24 HARRIS ST BRKL**

Said premises located in a **M 1.0** District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane Gordon
Harry Miller
Bailey S. Silbert**

At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing were Board Members Harry Miller (Chairman), Lawrence Kaplan and Bailey Silbert. Petitioner,

Julie Corman, was present and was represented at the hearing by her Architect, Mr. Thomas Shine, of Choi and Shine Architects, 358 Tappan Street, Brookline, MA 02446.

Mr. Shine described the neighborhood. He said 24-26 Harris Street was located in the Coolidge Corner area, near the intersection of Harris and Harvard Streets. On the lot is a two-family dwelling and a two-bay garage, which is attached to a similar garage on the rear abutting lot at 27-29 Auburn Street. A common driveway exists to the right of the house leading to the garage in the rear as well as a similar parking arrangement next door at 28-30 Harris Street. Primarily single and two-family dwellings are in the immediate neighborhood, but some moderately-sized multi-family dwellings are also in the area. He described the project as the construction of a second-floor deck extending from the house to the existing garage, partially connecting the garage's roof to the house. Mr. Shine said that the project has been revised several times due to input from the neighborhood. In the submitted proposal, the deck would have a rear yard setback of 18 feet 8 inches and a side yard setback of 12 feet 4 inches. Instead of being constructed over the garage as in previous plans, the deck would be attached to the garage only for support, extending over the garage roof approximately 5 inches. The deck would be 15 feet wide by 11 feet 3 inches deep, for a total area of 168 square feet. He said the deck would be located roughly in the center of the house and would have a three-foot-high railing, making its overall height 14 feet 6 inches. The applicant has not decided on the materials for the deck, but has indicated the railing would likely be wood, while the base of the deck would likely be constructed of a composite material such as Trex.

Board Member Bailey Silbert asked about the proximity of the deck to the existing 2nd floor. Mr Shine responded that he expects the deck will be within one step of the 2nd floor of the house.

Mr. Shine stated he believed that the project needed relief from both side and rear yard requirements of the by-law. He stated that it was his understanding that the Board could waive both side and rear requirements if a satisfactory counterbalancing amenity was provided for the project. Mr. Shine stated that the applicant

agreed to screen with vegetation the new air conditioning condensers on the East side of their home for the benefit of those passing by the front of the house and in particular their neighbor, Mr. Shatkin, at 22 Harris Street. Mr. Shine stated that he believed he also needed relief because of a pre-existing non-conformity.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal before the Board. Mr. Douglas Shatkin rose to speak. He stated that his home at 22 Harris Street is immediately to the East of the proposal. He was concerned relative to the maturity of the plantings in that they would be large enough to screen the new condensers and vents on the side of the home facing his property. He described the houses as being very close and he was concerned that small plants would not adequately screen the units from the side or front. He was also concerned about the time frame for installation of plantings given the time of year.

Lara Curtis, Planner, presented the report and recommendations of the Planning Board.

FINDINGS

Section 5.60 – Side Yard Requirements: Since the deck would connect the dwelling (principal structure) to the garage (accessory structure), the garage becomes part of the principal structure and therefore must meet the setbacks for a principal structure. *Please see dimensional table.*

Section 5.70 – Rear Yard Requirements: Since the deck would connect the dwelling to the garage, the garage becomes part of the principal structure and therefore must meet the setbacks for a principal structure. *Please see dimensional table.*

Section 5.72 – Accessory Buildings or Structures in Rear Yards: Accessory buildings or structures may occupy up to 25 percent of the required rear yard, but may not be located closer than 6 feet to a side or rear lot line, nor closer than 6 feet to a principal building. The pre-existing garage and steps already exceed the 25 percent coverage limit. *Since the proposed deck is attaching the dwelling and the garage, the garage is considered part of the principal structure and not subject to the rear yard coverage limits.*

Section 8.02.2 – Alteration or Extension: *Special permit required.*

DIMENSIONAL REQUIREMENTS

		<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Deck	Rear Yard Setback	15 feet	n/a	18 feet 8 inches	<u>Complies</u>
	Side Yard Setback	6 feet	n/a	12 feet 4 inches	<u>Complies</u>

Garage	Rear Yard Setback	30 feet	0 feet	0 feet	<u>Variance / Special Permit*</u>
	Side Yard Setback	10 feet	1 foot	1 foot	<u>Variance / Special Permit*</u>

- Under Section 5.43, the Board of Appeals may waive yard and setback requirements if the applicant provides a counterbalancing amenity. The applicant has indicated landscaping would be provided as the counterbalancing amenity.

Ms. Curtis said that the Planning Board is not opposed to the revised proposal to construct a second-floor deck extending from the house to the garage. Much of the lot is paved and used as parking, and the residents could benefit from the addition of usable open space. The applicant has worked extensively to re-design the deck in response to neighborhood concerns. The deck's size has been substantially reduced, it uses the garage roof only as a support edge, and its revised location provides for more privacy for abutters. The proposed deck would actually meet and exceed the setback requirements for such structures, but any deck, no matter what size, attaching the house to the garage, or coming within six feet of the garage, will require zoning relief. For a counterbalancing amenity, landscaping should be installed along the side lot line to effectively screen the dwelling's utility area, including the air conditioning units that are located there. Therefore, the Planning Board recommends approval of the plans titled "Corman Residence" and prepared by Choi + Shine Architects, last dated 8/15/07, subject to the following conditions:

1. Prior to the issuance of a building permit, a final site plan indicating the dimensions of the deck and side and rear yard setbacks shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, final elevations of the deck and rear façade of the dwelling shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, a final landscaping plan, indicating the installation of plant cover and screening for the utility area and air conditioning units located at the side of the dwelling, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

4. **Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the deck, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chairperson then called upon Frank Hitchcock, Senior Building Inspector. Mr. Hitchcock explained that freestanding garages are considered accessory buildings under the zoning by-law and enjoy diminished side and rear set-back requirements. In the process of attaching the deck to the garage, it becomes part of the main structure and its set-backs apply. Mr. Hitchcock stated that all of the zoning relief for this project can be granted by four Special Permits; one under Section 5.43 which may waive yard and set-back requirements if a counterbalancing amenity is provided, one under Section 5.60 regarding the side setback requirements for the garage, one under Section 5.70 regarding the rear setback requirements for the garage and one under Section 8.02.2 because the existing structures are pre-existing non-conforming. Mr. Hitchcock then spoke about building issues related to the noise generated by air conditioning condensers and the location of vents for gas appliances. He said that the Building Department had no objection to the two Special Permits or to the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and considered the foregoing testimony makes the following findings pursuant to Section 9.05 of the By-law:

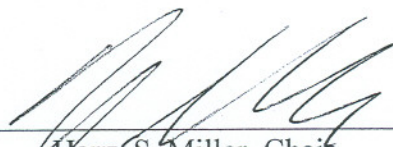
1. The site is an appropriate location for the proposed project.
2. The proposal as developed will not adversely affect the neighborhood.
3. There is no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper use of the proposed addition.
5. The addition, as proposed, will not have a significant adverse effect on the supply of housing available for low and moderate income people.
6. The proposed addition will not have any negative impact on the community or environment, and is designed appropriately.

Accordingly, the Board voted unanimously to grant Special Permits under Sections 5.43, 5.60, 5.70 and Section 8.02.2 of the Zoning By-law, subject to the following conditions:

1. Prior to the issuance of a building permit, a final site plan indicating the dimensions of the deck and side and rear yard setbacks shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, final elevations of the deck and rear façade of the dwelling shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, a final landscaping plan, indicating the installation of full and effective plant screening from the side and front of the newly installed condensers and vents located at the side of the dwelling, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the deck, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: October 12, 2007


Harry S. Miller, Chair

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS
07 OCT 12 AM 11:54